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RUEHKA/AMEMBASSY DHAKA PRIORITY 2003
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RUEHKT/AMEMBASSY KATHMANDU PRIORITY 7277
RUEHLO/AMEMBASSY LONDON PRIORITY 5196
RUEHNE/AMEMBASSY NEW DELHI PRIORITY 3431
RUEHNY/AMEMBASSY OSLO PRIORITY 5148
RUEHOT/AMEMBASSY OTTAWA PRIORITY 0021
RUEHSM/AMEMBASSY STOCKHOLM PRIORITY 0683
RUEHKO/AMEMBASSY TOKYO PRIORITY 4259
RUEHCG/AMCONSUL CHENNAI PRIORITY 9602
RUEHBI/AMCONSUL MUMBAI PRIORITY 6896
RUEHON/AMCONSUL TORONTO PRIORITY 1357
RHEFDIA/DIA WASHINGTON DC PRIORITY
RUEHGV/USMISSION GENEVA PRIORITY 3806
RHHMUNA/HQ USPACOM HONOLULU HI PRIORITY
RUEHBS/USEU BRUSSELS PRIORITY
RHEHAAA/NATIONAL SECURITY COUNCIL WASHINGTON DC PRIORITY
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C O N F I D E N T I A L SECTION 01 OF 03 COLOMBO 001006

SIPDIS

DEPARTMENT FOR SCA/INSB

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SUBJECT: MFA CALLS IN AMBASSADOR OVER DHS QUESTIONING OF
CHOD FONSEKA

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Classified By: DEPUTY CHIEF OF MISSION VALERIE C. FOWLER. REASONS 1.4
(B) AND (D).

11. (C) On November 2, Foreign Minister Bogollagama called in Ambassador regarding reports that the U.S. Department of Homeland Security had requested that Sri Lankan Chief of Defense (CHOD) Sarath Fonseka come in for a "voluntary" interview with the U.S. Immigration and Customs Enforcement office in Oklahoma City on November 4. (NOTE: Fonseka is a Legal Permanent Resident (LPR) in the United States and has family and property in Oklahoma. He currently is in the U.S. visiting family and re-establishing his LPR status. END NOTE.) Bogollagama said the interview was a matter of "urgency and relevance" to the government of Sri Lanka (GSL) and asked for information to "help us understand and formulate a proper reaction."

12. (C) Ambassador recounted recent developments regarding Fonseka, including cancellation of his invitation to attend the recent Chiefs of Defense conference in Hawaii due to U.S. concerns about his involvement in human-rights violations during the conflict with the LTTE. She also explained that as a green-card holder, Fonseka was required by U.S. law to confirm his status as an LPR. But as regards the DHS request to see Fonseka on November 4, Ambassador said she did not know the specific reason for the invitation.

13. (C) Bogollagama said what concerned the GSL were reports that a DHS lawyer had allegedly told Fonseka that the purpose of the interview was to gather information about the possible involvement in war crimes of SL Defense Secretary (and president's brother and U.S. citizen) Gotabhaya Rajapaksa. He said the GSL was very concerned about using Fonseka as a source for "prying" into the actions of the government in Sri Lanka and was seeking "immediate action" to prevent anything further from happening on November 4. He claimed that their sources (presumably the law firm Patton Boggs, which embassy understands has been hired to represent the GSL) told them

that DHS had investigated war crimes in the past. Bogollagama said any questioning of Fonseka about SL "official" information would be frowned upon by the GSL and "could seriously impact our relationship."

¶4. (C) Bogollagama passed to Ambassador an Aide Memoire, which noted that allegations against the defense secretary affected the vital interests of the GSL and had already occupied considerable time and attention of both governments at the highest levels. It noted that the SL president had formed a panel to consider the matters raised in the U.S. Report to Congress on Incidents During the Recent Conflict in Sri Lanka and claimed that any information Fonseka had gained in performance of his official duties had the status of "privileged information." It closed with a request to the U.S. State Department to inform DHS that "there is every reason for the interview proposed for the 4th November 2009, to not take place," and noted the GSL's view that DHS "should forthwith desist from any endeavor in this direction." (NOTE: The full text of the Aide Memoire is reproduced in para 6 below. END NOTE.)

COMMENT

¶5. (C) We do not know how much of the story about DHS's request to interview Fonseka is real and how much may have been fabricated by Fonseka himself to score points against the Rajapaksas. Whatever the reality, the prospect of U.S. officials questioning Fonseka regarding Gotabhaya Rajapaksa's actions during the conflict clearly is of great concern in Colombo and puts the leadership in a tight spot. While the Rajapaksas are keen on eliminating or neutralizing Fonseka as

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a potential presidential candidate, who could split the Singhalese vote, they do not have an interest in him being pressured as a war crimes accomplice, who might be willing to provide testimony against the Rajapaksas. They would like to see Fonseka go quietly into retirement as a war hero who time has passed, but the general appears to have other plans. END COMMENT.

¶6. (SBU) BEGIN TEXT OF AIDE MEMOIRE (grammatical and other irregularities are preserved from the original):

The assistance of the US State Department is sought concerning an unwelcome intervention by the US Department of Homeland Security (DHS), in a matter of grave concern, that has the potential to complicate the existing dialogue between the friendly Governments of Sri Lanka and of the United States.

The Government of Sri Lanka is informed that Sri Lanka's Chief of Defence Staff General Sarath Fonseka who at present is in the United States, has received a letter calling him for an interview with the DHS Immigration and Customs Enforcement on Wednesday, November 04, 2009 at 3:00 p.m. in Oklahoma City, Oklahoma.

In addition, on the 28th of October, General Fonseka had received a telephone call from a DHS Attorney to the effect that the intention behind the request for the interview is to use him "as a source against human rights violations done by Secretary/Defence". It had been clarified during the telephone conversation that the reference to "Secretary/Defence" relates to Mr. Gotabaya Rajapaksa, the Secretary of the Ministry of Defence, Public Security, Law and Order of Sri Lanka.

It is pertinent to recall in this regard that Mr. Gotabaya Rajapaksa's duties as Secretary of that Ministry required his dealing with a situation of a grave onslaught that threatened the integrity of Sri Lanka and which was launched by the LTTE, an organization proscribed by several countries including the United States, for its terrorist activities.

The allegations therefore leveled against the Sri Lankan Defence Secretary affect the vital interests of the Government of Sri Lanka and have occupied considerable time and attention of the respective Governments, at the highest levels. In fact, the US Ambassador in Colombo has already been briefed of the decision taken by the President of Sri Lanka to appoint a Panel to consider the matters raised in the US Department of State 2009 Report to Congress on Incidents During the Recent Conflict in Sri Lanka. This decision by the President stems from Sri Lanka's unbroken commitment as a democratic nation to the Rule of Law, under which allegations are first assessed as to whether they possess any substance meriting further inquiry.

The Chief of Defence Staff is a high level position within the Sri Lanka Government. General Fonseka is on an official visit on behalf of the Government of Sri Lanka. He traveled to the United States on a diplomatic passport for prearranged appointments with senior personalities of the State Department and other US Government Agencies. Moreover, whatever General Fonseka may have become aware of during his service with the Government of Sri Lanka and in the course of his duties, has the status of privileged information. He has no authority to divulge or share this information with third parties, without the prior approval and consent of the Sri Lanka authorities.

Given the above, it is hereby requested for the US State Department to inform the Department of Homeland Security that

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there is every reason for the interview proposed for 4th November 2009, to not take place. The Government of Sri Lanka is of the view that the Department of Homeland Security should forthwith desist from any endeavor in this direction.

Colombo
2nd November 2009

END TEXT OF AIDE MEMOIRE
BUTENIS